

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Progeny LMS, LLC)	
)	RM No. 10403
Amendment of Part 90 of the)	
Commission's Rules Governing the)	
Location and Monitoring Service to)	
Provide Greater Flexibility)	

REPLY COMMENTS OF GE – INTERLOGIX, INC.

GE – Interlogix, by its attorneys, hereby comments on the above-captioned Petition for Rulemaking (“Petition”) filed by Progeny LMS, LLC (“Progeny”). Although GE – Interlogix has not filed before on this matter, recent reply comments by Progeny and Warren Havens and Telesaurus Holdings GB, LLC (“Warren Havens”) have raised significant new issues bearing on the future of Part 15 devices in the 902 – 928 MHz band.

GE - Interlogix is a global technology leader, supporting the needs of the rapidly growing electronic security industry. Through its Security and Lifesafety Group, Interlogix develops and manufactures intrusion and fire protection systems for home, commercial and industrial markets. Products include, motion detectors, control panels, cameras, keypads, vibration sensors, smoke and carbon monoxide detectors – the full range of equipment required to safeguard premises of all types. Interlogix will be directly affected by the outcome any rulemaking that may be initiated in response to the LMS Petition.

“Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technology or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their due diligence before

proceeding s they would with any new business venture.”(Federal Communications Commission)¹

GE – Interlogix notes with disquiet the troubling trend of those who have acquired Commission licenses through competitive bidding and subsequently seek to improve the value of their spectrum by seeking Commission protection from other spectrum users, most notably those operating unlicensed devices under Part 15 of the Commission’s rules.² In this case, Progeny, knowing well that the allocation for the LMS service was designed taking into account the vast numbers of Part 15 devices in the 902-928 MHz band, has now determined that its business is not profitable and requests relief from its obligation to co-exist with these Part 15 devices, permission to engage in other activities that would result in many more licensed operations in the band, and elimination of the “safe harbor” provisions that define the circumstances under which emissions from Part 15 devices will be considered harmful interference to LMS licensees. Further, in its recently filed reply comments, Progeny now suggests the Commission require that Part 15 devices in the 902 – 928 MHz band be re-designed with “frequency agility” capability to avoid mutual interference with LMS operations. For its part, Warren Havens would go further and eliminate Part 15 use of the band altogether.

As others have pointed out, Progeny (and Warren Havens as well) had both the opportunity and obligation to conduct due diligence before it committed itself to the competitive bidding process and acquired spectrum rights in those portions of the 902 – 928 MHz band allocated for the LMS service. The service was narrowly defined for the “use of non-voice signaling methods to locate or monitor mobile radio units.”³ LMS licensees are not permitted real time interconnection to the public switched network (limiting the type and extent of use of LMS operations).⁴ LMS licensees are required “to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR part 15 devices.”⁵ Finally, in further recognition of the

¹ This is the admonition given by the Commission to prospective bidders at all spectrum auctions.

² Interlogix notes the pending petition for rulemaking by Sirius Satellite Radio, Inc. and XM Radio, Inc. requesting unparalleled protection from out-of-band emissions from Part 15 and Part 18 devices. Significantly, the Commission has not chosen to place this petition on public notice.

³ See Section 90.7 of the Commission’s rules.

⁴ See Section 90.353(c) of the Commission’s rules.

⁵ See Section 90.353(d) of the Commission’s rules.

embedded base of Part 15 devices in the band, the Commission took the unusual step of limiting the circumstances under which the users of Part 15 devices might be considered to have caused “harmful” interference to LMS systems.⁶

All this was known to Progeny before it submitted its first bid.⁷ But Progeny claims the marketplace has changed. This, of course, is shorthand for claiming that there is competition. Progeny claims that the Commission should recognize that times have changed since 1995 – a mere seven years ago – when the Commission allocated spectrum and adopted its rules and policies for the LMS service. This argument is specious and misleading. The auction for LMS spectrum was held in 1999. And even in the world of rapid technological development, little has changed since 1999. When Progeny bid for its spectrum it knew or must have known that a competitive technology, GPS had been released for civilian use years before and was not only widely available, but already a popular option in automobiles. And Progeny certainly knew about the coming requirements for E911 capability. Further, it certainly is disingenuous of Progeny to point to the growth of the CMRS industry since 1993, when it acquired its spectrum in 1999.

Either Progeny made a bad business judgment and now expects the FCC to save its investment, or Progeny knew when it bid that prospects for the LMS service had already dimmed, but chose to proceed on the theory that it could subsequently convince the Commission to change its rules. Under either scenario, there is no justification for any Commission action that might change the careful balance in the use of the 902 –928 MHz band between LMS licensees and the Part 15 community.

“There are millions of Part 15 devices in operation throughout the United States today and this number is expected to increase in the future.”(Federal Communications Commission)⁸

The FCC could have easily amended this statement to refer solely to Part 15 devices in the 902 – 928 MHz band. It is important for the Commission to understand

⁶ See Section 90.361 of the Commission’s rules.

⁷ Whatever investment Progeny, its predecessors or others may have made previously does not affect the speculative nature of any FCC auction.

that objections from Part 15 manufacturers are not merely reflexive. Since 1995, Part 15 devices using the 902 –928 MHz band have been designed around the safe harbor provisions of the LMS rules. Part 15 manufacturers have proceeded with their businesses based on reasoned judgment of the amount of LMS service likely to be present in this band. GE – Interlogix is even now in the process of designing a new product line for use in the band, relying on the existing Commission regulations.

The Progeny proposals would directly affect the continued ability of Part 15 devices to operate successfully in a band where they have been for many years.⁹ The LMS rules recognized the ubiquitous presence of Part 15 devices and created a safe harbor where Part 15 devices would not have to exist under threat of interference complaints from LMS licensees. To abandon the safe harbor now would threaten an entire generation of devices. To require that Part 15 devices be designed with frequency agility to avoid the LMS portions of the band (Progeny's latest proposal) would be even more untenable. Apart from the cost, prohibitive for many low cost devices, the real effect of this proposal would be to reduce in half the size of the band where Part 15 devices could operate at all. Progeny is again disingenuous when it claims it is not proposing to expand the amount of spectrum in which multilateration LMS is licensed. The point is not that LMS systems would have more spectrum under the Progeny proposal, but that Part 15 devices would effectively have less.

In the name of flexibility, Progeny also requests that the Commission re-define the services that LMS licensees can provide. This, of course, as Progeny so plaintively points out, is because LMS is not a viable business. Progeny understandably wants the Commission to allow it to do something lucrative. But the effect of offering the LMS licensees the flexibility Progeny requests would be to greatly increase the use of the band, ultimately destroying the ability of Part 15 devices to operate. The Commission should be clear – Progeny's request for flexibility is not the same as the reasoned proposal that led to the adoption of flexibility for MMDS operators. By allowing MMDS operators to provide digital communications services, including broadband access, the Commission

⁸ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695 at Para. 32 (1995)

⁹ Until 1985 field disturbance sensors were the only Part 15 devices in the band. In 1985 the Commission opened the band to spread spectrum devices, and in 1989 Part 15 devices generally.

did not threaten the existence of other users of MMDS spectrum, but only created a regulatory framework that encouraged more broadband access. If anyone is to be disadvantaged by permitting MMDS flexibility, it will only be those providing competitive services and that has not a spectrum management concern for many years. But crowding the millions of Part 15 devices out of the 902 –928 MHz band surely is a spectrum management concern and the Commission should not contemplate it.

The Warren Havens “Draft.”

In an unusual, if not peculiar, filing Warren Havens has commented on the Progeny proposal by offering a “draft” of its own petition for rulemaking. GE – Interlogix is tempted to ignore the Warren Havens comment since by its own admission it does not offer a final proposal. Unfortunately, however it is characterized and whatever Warren Havens’ motivation, its slash and burn approach to the continuing relationship between the LMS Service and Part 15 operations is now on the record, and lest the Commission simply offer it up as an alternative in some future Notice of Proposed Rulemaking, GE – Interlogix must strenuously object.

The Warren Havens proposal is admirable only for its simplicity. Warren Havens would remove all Part 15 devices in the 902 –928 MHz band from the market in three years and not permit further operation of Part 15 systems using outside antennas after three years. Period. No thought is given to the huge existing infrastructure investment of Part 15 manufacturers and users. Certainly, no thought is given to the millions of consumers who enjoy and have grown dependant on the various Part 15 devices they use. Should the Commission determine to proceed on the matters raised by Progeny in its Petition, GE – Interlogix urges that the proposal of Warren Havens not be listed as an option.


Conclusion.

GE – Interlogix is very concerned that the Commission’s labors of the mid-nineties to protect Part 15 devices not be casually discarded simply because the LMS industry is in ill-health. In many ways the investment in LMS licenses has turned out to be much like the now discredited investments in internet stocks. In both cases, the

product was over-valued. In both cases, little due diligence was performed. The difference is that those who bought the internet stocks, operating in a real marketplace, have no expectation that the SEC will help them to swap their worthless stocks for other stocks that may be more valuable. But those who acquired licenses in spectrum auctions seem to believe that their lack of judgment can always be forgiven by the Commission, even at the expense of others. Even exposing the issues raised by Progeny to comment in a formal rulemaking proceeding will reinforce this belief. The Commission should take this opportunity to make it clear that where the businesses and investments of others are at risk, it will not consider revising its rules to come to the aid of a failing licensee. Accordingly, GE- Interlogix urges the Commission to dismiss the Progeny Petition.

Respectfully submitted

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